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Property lost [to accompany bill H. R. 402].

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H.R. Rep. No. 383, 23rd Cong., 1st Sess. (1834)

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PROPERTY LOST.

[To accompany bill H. R. 402.]

APRIL 3, 1834.

Mr. E. WHITTLESEY, from the Committee of Claims, made the following
REPORT:

The Committee of Claims, instructed by a resolution of the House of Representatives "passed on the 19th of March, to inquire into the expediency of providing by law for referring all claims for buildings burnt and destroyed by the enemy during the late war, because they were in the military occupation of the United States by the order of an officer or agent of the United States, as places of deposite or as barracks, to the Third Auditor of the Treasury Department, on principles which have heretofore been prescribed in the settlement of such claims; and that they further inquire into the expediency of providing by law for the settlement of all claims arising from the loss of property in the military service of the United States, by contract or impressment, and for horses lost during the late war, also during the war with the Seminole Indians, and the late war with the Indians commanded by Black Hawk, on such principles as have heretofore been prescribed in such cases;" and to which was referred a preamble and joint resolution of the Legislature of Indiana, approved January 30, 1834, of the following tenor, to wit: Whereas many citizens of this State, and our sister States, in the service of the United States as mounted rangers, under an act of Congress of 1832, for the defence of the frontier, during the last war, lost and disabled many of their horses when in such service, and have not yet received remuneration for the same: and whereas we deem it nothing more than justice that they should be remunerated for all losses by them sustained during such service: Therefore,

Resolved by the General Assembly of the State of Indiana, That our Senators in Congress be instructed, and our Representatives be requested, to use their exertions and influence to procure the enactment of a law which will authorize speedy payment to be made by the United States, for all horses lost or disabled, to their owners, in public service, or in consequence thereof, on the presentation of the proper proofs and vouchers of such loss. Therefore,

Resolved, That his Excellency the Governor be requested to forward copies of this preamble and resolution to each of our Senators and Representatives in Congress.

N. B. PALMER,
Speaker of the House of Representatives.
DAVID WALLACE,
President of the Senate.

Approved, January 30, 1834.

N. NOBLE.

And to which was referred another preamble and joint resolution in relation to horses lost by the rangers and the volunteer militia of Indiana as follows, to wit: Whereas many of our citizens, in the service of the United States as mounted rangers and volunteers during the last war with the hostile Indians, lost and disabled their horses when in such service, and have not as yet been remunerated for the same, which were ordered into service by the Executive of the State, in the month of June, 1832, and placed under the command of Colonel A. W. Russell on the frontiers of Indiana: Therefore,

Be it resolved by the General Assembly of the State of Indiana, That our Senators and Representatives in Congress be requested to use their best exertions to procure an amendment of the law now in force, authorizing the payment for horses, so as to embrace the case of the horses lost under the command of A. W. Russell as aforesaid, upon the proper proof and vouchers presented to the department.

And be it further resolved, That his Excellency the Governor be requested to forward copies of this preamble and joint resolution to each of our Senators and Representatives in Congress.

N. B. PALMER,

Speaker of the House of Representatives.

DAVID WALLACE,

President of the Senate.

Approved, January 30, 1834.

N. NOBLE.

REPORT:

That soon after the last war, the attention of the Committee of Claims was drawn to the subject of making some provision by law for examining the claims that had been presented to Congress for losses incurred during the late war by the destruction of buildings; by the loss of property in the military service of the United States, and by the loss of horses; because those who had them in possession were dismounted and ordered to do duty on foot, or because their horses died for the want of forage, which the United States were not able to furnish, although they had agreed to furnish it. There seemed then, as now, to be an impression very commonly entertained that the United States were liable for all losses, whether they were occasioned by the wanton acts of the enemy, or the chances and incidents of war. The claims were presented and urged with great pertinacity, on the broad principle that a Government was bound to protect her citizens, and that the property being lost in the prosecution of a war, whose existence was for the common benefit, all should share in an equal degree, according to his property, the losses incurred, as well as share the common expenses. The enemy had lighted, by the conflagration of the buildings, the shores of the bays and the coasts of the Atlantic States, and the lakes and rivers, and forests of the interior, in every instance, where he had either subdued the country, or made a temporary descent for the purposes of plunder; and the army having been obliged to take private property for public use, because in every branch and department of this arm of national defence great deficiencies existed, and great losses having been sustained on the Western frontiers by the loss and destruction of the horses of mounted volunteers and ran-

gers, in various ways, not contemplated when the owners of this species of property took it into the service, a large number of claims were presented to Congress, and remuneration requested. Several special acts had passed, but the claims being still numerous, the Committee of Claims reported a general bill on the 14th of November, 1814, on the petition of William Pace and others; and under instructions contained in a resolution passed on the 28th day of September preceding, directing them to inquire into the expediency of making provision by law for the payment of private property lost, killed, or destroyed, while employed in the service of the United States. This bill was not further acted upon at that session. The great principles which have governed Congress in legislating on this subject, either by general or special legislation, were contained in that bill, and the act passed on the 2d of August, 1813, authorizing the payment for wagons and teams captured or destroyed by the enemy at Detroit.

The principles recognised in the law of 1816 are, that the United States be made liable for the payment of property which was destroyed by the enemy, only in those cases where the property, if personal, was in the military service of the United States by contract, or impressment, and was lost without any fault of the owner, and when he did not agree to incur any risk; or if buildings, that they were used as barracks, or as places of deposite, by the order of an officer or an agent of the United States, and were destroyed by the enemy when thus occupied, in consequence of said occupation. To embolden a soldier in the hour of battle; and to encourage him to seek the post of danger, if he served in a corps entitled to a horse in the service, a provision was inserted that if a horse was killed in battle, or died in consequence of wounds received therein, he was to be paid the value of said horse.

The United States were also to pay for such horses as had died for the want of forage, when they were bound to have furnished it, and failed.

The President of the United States was to prescribe rules for the taking of testimony, and by and with the advice and consent of the Senate was to appoint a commissioner to receive and decide upon the claims that should be presented, and if a claim amounted to a sum exceeding two hundred dollars, he might award a commission, and take testimony.

The commissioner was restricted in his functions by the act of March 3, 1817, and his power to decide cases arising under the ninth section of the act of 9th April, 1816, for the destruction of buildings, was abrogated, and, instead thereof, he was directed to report the evidence to Congress, and, in all other cases exceeding two hundred dollars, his decisions were to be revised by the Secretary of War, and unless they were confirmed by him, they were not to be paid. The fourth section of the act of March 3, 1817, extended the provisions of the act of April 9, 1816, to the cases of property lost, captured, or destroyed in the wars with the Indian tribes subsequent to the 18th of February, 1815, (the conclusion of the war with Great Britain,) and prior to the first day of September following. All the claims that had been filed with the commissioner, and remained undecided, were referred to the Third Auditor by the act of April 20, 1818.

This officer was to be governed in all respects by the same rules, regulations, and restrictions as had theretofore been prescribed to the commissioners of claims, under the abovementioned acts. As the act of 1818 only empowered the Third Auditor to examine the claims that remained:

undecided by the commissioner, the presumption is that Congress acted under the belief that all the claims were presented to the commissioner, which the United States were bound to pay, on the principles laid down in the act of 1816.

The campaign against the Seminole Indians, in 1818, produced another class of cases, not provided for in the act of 1816. The United States had failed to furnish forage, and the horses, in many instances, were so exhausted as to have been left on the march of the troops, and, although they might not have died, they were lost to the owners, as they never were recovered. Application was made to Congress for relief, when the Committee of Claims reported against granting it, because, amongst other things, it appeared that the mounted men had been paid for the use of their horses for the entire period of service, and that they had in many cases been paid for, or been furnished with clothing, to which they were not entitled.

Congress however passed "an act for the relief of the officers, volunteers, and other persons, engaged in the late campaign against the Seminole Indians," on the 4th of May, 1822. By this act, if a horse was unavoidably abandoned and lost, because the United States failed to supply a sufficient quantity of forage, the owner was to be paid the value thereof. In this particular, the act of 4th May, 1822, included a class of cases not before provided for, and it included the officers, as well as the men. The act of April 9, 1816, was limited to two years. Many claims had been rejected by the commissioner, and by the Third Auditor, in consequence of defects in the testimony, or because the provisions of the law did not extend to them, and many were not presented to the commissioner within the existence of the act last mentioned. The consequence was that these claimants were dissatisfied, and presented their memorials to Congress, praying to be compensated for their losses, and for the passage of a general law to embrace their cases. By the act of 3d March, 1817, the commissioner of claims was authorized to appoint one or more discreet persons to take testimony on the claims, whose value exceeded two hundred dollars. Such commission was instituted, and consisted of three persons living on or near the Niagara frontier, and an agent appointed by the commissioner. Testimony was taken, and it is understood a report was made in each case presented.

The committee have inquired for these papers in the Clerk's office, and they have been informed they were deposited in the Third Auditor's office after the passage of the act of March 3, 1825. The commissioner of claims sent the report of this commission to Congress, which was referred to the Committee of Claims. That committee reported on the 27th of March, 1818, a bill for the partial relief of the sufferers.

The bill proposed to give them fifty per cent. on the amount of their claims for buildings, and thirty per cent. on their personal property, exclusive of merchandise. The report that accompanied this bill is contained in the Reports of Committees, 1st session 15th Cong. Rep. 177.

It appears, from the journal, that the bill was amended in the Committee of the Whole, which amendments were concurred in by the House, the last with an amendment; and on the question to engross the bill, it passed in the negative. The committee desired to know what these amendments were, and resorted to the files of the Clerk's office for information; but they were not able to obtain it there, as the bill on file

does not contain the amendments. It appears, from the National Intelligencer of April 11, 1818, that a motion was made in Committee of the Whole to strike out the first section of the bill, which passed in the negative. Mr. Reed, of Maryland, moved an amendment, empowering the Secretary of War, upon application of any person on the waters of the Chesapeake, whose buildings had been destroyed by the enemy, to appoint appraisers to assess the value of such buildings, and when such valuation was made, the Secretary was directed to report the same to Congress. On motion of Mr. Colston, by the consent of the mover, said amendment was so modified as to extend to all citizens of the United States or the Territories thereof, residing therein. The amendment was further amended, on motion of Mr. Forsyth, so as to empower the Secretary of War to pay fifty per cent. on the valuation of buildings, and thirty per cent. on personal property burnt, destroyed, or carried away. The amendment was further amended, on motion of Mr. Rich, who reported the bill, so as to exclude articles of trade or merchandise. The motion to engross the bill as amended was decided in the negative: yeas 51, nays 91. Mr. Rich and others who advocated the bill as it was originally reported, voted in the negative. The committee infer, from the fate of this bill, that Congress was opposed to the establishment of any new class of claims, and when taken in connexion with the subsequent legislation, during the same session, it is quite certain there was no inclination to vary from the principles of the law of April 9, 1816, as to the cases to be relieved. Mr. Williams, chairman of the Committee of Claims, on the 15th of April, 1818, reported a bill to transfer the claims in the office of the commissioners to the Third Auditor of the Treasury Department, which became a law on the 26th of the same month. As the act of 1816 was limited to two years, and as the Third Auditor was restricted to the cases before the commissioners, there were many claims which could not be brought before him for his decision.

The claimants who had not obtained relief under the act of 1816, and the acts amendatory thereto, presented their petitions to Congress, and prayed relief. This was granted in many individual cases, but a large number of claims remained unprovided for.

The Register of the Treasury reported to the House of Representatives, on the 6th day of January, 1825, that there had been paid under the act of 1816, and the acts amendatory thereto, to 1823, inclusive, the sum of \$533,152 13. A select committee was appointed at the first session of the eighteenth Congress, to inquire into the expediency of amending the act of 1816, and the acts amendatory thereto, which reported a bill on the 5th of April, 1824. This bill not having been disposed of at that session, was taken up at the subsequent session, and became a law on the 3d of March, 1825.

This act referred to buildings alone, and appropriated the sum of \$250,000 to pay for such buildings as had been destroyed by the enemy during the late war, while in the military service of the United States, as barracks, or as places of deposit for military or naval stores, by the order of an officer or agent of the United States; and it was limited to those cases that had been presented to the commissioner of claims, under the act of April 9, 1816. And in time the presentation of the claims was limited to nine months. All cases were excluded where the owner had taken the risk upon himself; and the rent he might have received was to be de-

ducted from the allowances that might be made in other cases. If the allowances exceeded two hundred and fifty thousand dollars, the claimants were to be paid a reasonable proportion. The committee heretofore ascertained the claims allowed under this act did not amount to the appropriation by about twenty thousand dollars. Special allowances have been made by Congress subsequently, whose aggregate amount is considerably greater than this excess. During the discussion of the act of March 3d, 1825, various amendments were offered, to enlarge the fundamental principles and provisions of the previous acts, which were rejected. The steady adherence to these principles should be taken, the committee think, as conclusive upon them, in discharging the duty imposed upon them.

Congress has granted relief in several cases which were rejected by the Third Auditor, and it is believed in all instances on additional evidence. Relief has been granted in other cases, which were not submitted to the commissioner, nor to the Third Auditor. It was, undoubtedly, the intention of Congress to have barred all the claims not presented within two years from the passage of the act of April 9, 1816; and that intention was steadily kept in view by the act of March, 1817, and the act of March, 1820, and the act of March, 1825, amendatory thereto; and this will fully appear from the consideration that although the time for deciding the claims was enlarged, still the power of the commissioner, and afterwards of the Third Auditor, was restricted to the claims filed with the commissioner within the period limited by the act of 1816. It has been found impracticable to bar claims by statutes of limitation; for although the accounting officers are governed by them so long as they are in force, the period for settling claims has been extended from time to time, when application has been made for that purpose, and its appearing that any number of claims would be excluded, unless further indulgence was given; or if the statute bars them, Congress has granted relief in special cases, which in effect abrogates the general statute, and by changing the judicatory from the accounting officers to Congress, a wide field is laid open for imposition and fraud, and without the most scrutinizing examinations and researches by the committees, a rich harvest will be realized by claimants. The danger of imposition is increased by the antiquity of the claim. In the examination of claims of long standing, this committee frequently detect the withdrawal of important papers, and by such suppression, with some additional testimony, good cases are presented on paper; the unsoundness of which is detected by examining former reports, or by resorting to the public offices, or by taxing the recollections of those who have served a number of years on the committee; and without the greatest vigilance by the committee, (consistent with their attention upon the business of the House, and the discharge of their duties to their constituents,) the Treasury would be heavily taxed by such claims as are, on examination, found never to have been good, or to have been settled and paid. The committee are satisfied, from the past, that Congress will not, for any length of time, enforce a statute of limitations against claims, and that the only security against imposition will be found in the vigilance of those who shall examine them. Whenever they can be referred to the accounting officers, under suitable restrictions, the committee are satisfied greater security is attained than by the action of Congress. The committee are disposed to revive by enactment most of the provisions of the acts referred to, but they are disinclined to enlarge them essentially, as they would thereby revive those

cases that have long since been rejected, and go counter to what has been the law which has governed the accounting officers and Congress. The committee give this historical account of the legislation on this subject, to save members of Congress from the trouble of searching it out by examining the different reports, journals, and newspapers, from which correct information can only be obtained.

As to the loss of horses by those who have been engaged in the Indian wars on the frontiers, and to which the resolutions passed by the Legislature of Indiana refer, as does also a letter from the Representatives from Illinois, it is believed the owners will obtain relief by extending to them the provisions of an act for the relief of the officers, volunteers, and other persons engaged in the late campaign against the Seminole Indians, passed May 4, 1822, and the act explanatory thereto, passed May 26, 1824, and for this purpose the provisions of said act will be incorporated into a bill, which the committee herewith report. As the losses provided for by these acts occurred under similar circumstances to those now under consideration, and as the acts were passed after discussion and deliberation, the committee are not disposed to enlarge their provisions so as to include a new class of cases.

The bill referred to in the letter from the Representatives of Illinois, as having been reported in the Senate, provides, "That any and every person mentioned in the first section of the act, to which this is an amendment, who sustained damage by the loss of any horse while in the service of the United States, as by said act mentioned, shall receive pay for the same, as therein provided, in all and every case where the horse was wholly lost to the owner, whether said horse died or not, whenever it shall fully appear that the loss was in consequence of said service, provided the loss was not the result of negligence on the part of the owner." The Representatives from Illinois propose, in their said communication, that the committee amend the bill, so as to include all other property. From the early history of this Government to the present time, forty cents a day has been given to those who perform military duty on horseback, except to such field officers as are entitled to horses while in service, for the use and risk of each horse. The bill reported in the Senate proposes that this risk should be borne by the United States. This committee think the settled legislation of the country should not be changed in this particular, although there may be some cases that appear to be hard ones. The compensation given is generous, and being designed to provide for all risks incident to the service, the committee are not disposed to enlarge the responsibility of the United States, except in those instances where they have failed to perform their part of the contract.

HOUSE OF REPRESENTATIVES,

March 20, 1834.

DEAR SIR: We respectfully beg leave to call your attention, and through you that of the Committee of Claims, to the proposition now before your committee, for settling claims for property and horses lost in the late Indian war, on the frontier of Illinois and Michigan. You know an act was passed by the last Congress, designed to provide for paying

those claims ; but, owing to a defect in the law, or in the construction it has received, the objects of Congress have not been met, as it has fallen far short of satisfying the just claims of those who were so unfortunate as to have lost property on that occasion ; most of the horses were lost in consequence of forced marches in pursuit of the enemy. It will be seen by the official, and all accounts of that campaign, that it was one of most unusual length and hardship, during no part of which period was there one ounce of provender furnished to the largest portion of the horses in service. After eluding the vigilance of the commanding general, and the officers and army with him, for many weeks, the enemy made a desperate effort to escape our forces, by retreating very far to the North, and were pursued, by forced marches, by our troops, for many days, into an unknown and uninhabited wilderness. During this forced march many of the horses, from fatigue and want of forage, gave out, and were abandoned, by order of the commanding officers, and were wholly lost to their owners, who left them, with their baggage, and pursued the Indians on foot ; and, like brave fellows, were found in the front rank, when the enemy was overtaken and conquered. The law of the last session was designed to pay those just claims, for losses sustained exclusively in the service of the country, and under circumstances entirely beyond their control. We enclose two letters, one from Governor Reynolds and one from General Atkinson, who commanded the army, and who are fully acquainted with the justice of those claims, as they were present, and know all the circumstances. We also beg leave to submit a printed bill, introduced into the Senate by General Robinson, with three amendments, which are interlined in it, and which we think will be necessary, to do justice to those claimants.

With great respect,

Your obedient servants,

JOSEPH DUNCAN.
ZADOK CASEY.
CHAS. SLADE.

Hon. E. WHITTLESEY,

Chairman of the Committee of Claims.